STATE CONTROL OVER INTERSTATE RAILROAD RATES BY CONDITIONS IN CHARTERS OR LEASES. — In a recent case it was held that a state cannot reserve the right to fix interstate rates as a condition in a lease of a railroad, or in a charter of incorporation. *State* v. *Western & Atlantic R. Co.*, 76 S. E. 577 (Ga.). Aside from the question of interstate commerce, if the conditions amount to a contract setting a standard by which the rate is fixed, it would seem on principle that it should be void on the one hand as an attempt to barter away the state's governmental function of regulating public service companies,[1] and on the other as an interference with the proper performance of the carrier's duties by rendering him liable to work for less than a reasonable return.[2] By the weight of authority, however, such contracts are binding[3] and the decision must turn upon the fact that the commerce was interstate.

Since a state may not exclude a corporation engaged in interstate commerce from its borders, it may impose no condition upon its entry to do interstate business that it could not impose as a direct regulation.[4] But a state may always refuse the privilege of incorporation. Where the price of the privilege, however, is regulation of matters in which the Constitution gives Congress exclusive control, there is a clear invasion of the Congressional prerogative.[5] Regulation of interstate rates has always been considered a matter in which uniformity was so necessary that it was within the exclusive control of Congress.[6] This was definitely settled when Congress precluded the possibility of direct state action by the passage of the Interstate Commerce Act.[7] Since almost all railroads are state corporations, if the states could gain control by conditions in the charter, the exclusive power of Congress would be largely usurped.[8]

If the condition be treated as an agreement between the state in its non-governmental capacity as lessor and the railroad as lessee, the result is the same. Even if the contract were not void on the general principles of public service, it would have to yield to legislation by Congress fixing rates.[9]

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[1] Laurel Fork & Sand Hill R. Co. *v.* West Virginia Transportation Co., 29 W. Va. 324. In the principal case, however, the state reserved its control over rate fixing.

[2] See Woodstock Iron Co. *v.* Richmond & Danville Extension Co., 129 U. S. 643, 662, 9 Sup. Ct. 402, 409.

[3] Detroit *v.* Detroit Citizens' Street Ry. Co., 184 U. S. 368, 22 Sup. Ct. 410; Minneapolis *v.* Minneapolis Street Ry. Co., 215 U. S. 417, 30 Sup. Ct. 118; Grand Rapids & Indiana Ry. Co. *v.* Osborn, 193 U. S. 17, 24 Sup. Ct. 310. See 2 WYMAN, PUBLIC SERVICE CORPORATIONS, § 1421.

[4] Crutcher *v.* Kentucky, 141 U. S. 47, 11 Sup. Ct. 851; Western Union Tel. Co. *v.* Kansas, 216 U. S. 1, 30 Sup. Ct. 90; Pullman Co. *v.* Kansas, 216 U. S. 54, 30 Sup. Ct. 232. But see 24 HARV. L. REV. 635, 640; 23 *id.* 549. Of course in those cases in which the state has power to legislate in the absence of inconsistent legislation by Congress, conditions may be imposed.

[5] It is certain that all such conditions must yield to inconsistent legislation by Congress, and it is submitted that the result is the same where, although Congress has not acted, its power is exclusive.

[6] Wabash, St. Louis, & Pacific Ry. Co. *v.* Illinois, 118 U. S. 557, 7 Sup. Ct. 4.

[7] Louisville & Nashville R. Co. *v.* Eubank, 184 U. S. 27, 22 Sup. Ct. 277. *Cf.* Southern Ry. *v.* Reid, 222 U. S. 424, 32 Sup. Ct. 140; Gulf, Colorado, & Santa Fé Ry. Co. *v.* Hefley, 158 U. S. 98, 15 Sup. Ct. 802.

[8] Of course Congress could incorporate railroads and in a measure avoid this result.

[9] Louisville & Nashville R. Co. *v.* Mottley, 219 U. S. 467, 31 Sup. Ct. 265.

And although this legislation merely sets a maximum, and the rate agreed upon is within it, it is submitted that the detailed provisions of the Interstate Commerce Act show the intent of Congress to allow no interference with rate-fixing except by its own regulations.[10] The carrier is commanded to file reasonable rates,[11] and a contract fixing those rates, or delegating their fixing to another, would seem to violate the spirit of the act. The lessor, it is true, could have fixed the rates had he not leased the road, but the lessee is now the carrier subject to the act.[12]

The situation of the railroad, then, may be precarious. If the charter only confers the right to charge rates fixed by the state, any other rates are *ultra vires* and render the charter forfeitable. If charging rates fixed by the state is a condition precedent to incorporation, the railroad never becomes incorporated. If this is a condition subsequent, however, the right of the state to forfeit the executed charter never arises. But the performance of the illegal condition may be such a substantial portion of the transaction that the whole transaction is void, and no corporation is created. Similarly in the case of a lease, if charging the state rates is a condition precedent, the term never vests; if a condition subsequent, the right to divest it never arises.[13] However, if the performance of the condition is so vital a portion of the consideration for the lease that its illegality renders the lease void, the lessor could recover the premises.[14]

CONSTRUCTIVE NOTICE OF THE CHARTER OF A CORPORATION. — The doctrine that one dealing with a corporation has constructive notice of the provisions of its charter has brought great confusion into the law of corporations. Probably no court rejects it entirely;[1] and yet no court dares to apply it without restriction. Although the English court has been the most consistent supporter of the doctrine,[2] an Australian court refused to follow it in a late case, where the *bonâ fide* purchaser of stock, marked "paid up," was not charged with notice of the articles of association[3] which showed that this stock was issued at less than par.[4] *In re*

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[10] See Southern R. Co. *v.* Reid, 222 U. S. 424, 438, 32 Sup. Ct. 140, 143.

[11] Section 1.

[12] See NOYES, INTERCORPORATE RELATIONS, 2 ed., § 230.

[13] 1 TAYLOR, LANDLORD AND TENANT, 9 ed., § 281.

[14] *Cf.* Berni *v.* Boyer, 90 Minn. 469, 97 N. W. 121; White *v.* Franklin Bank, 22 Pick. (Mass.) 181; Taylor *v.* Bowers, 1 Q. B. D. 291. See KEENER, QUASI-CONTRACTS, 259. The illegality here is clearly not of such a degree as to preclude any recognition of the transaction by the courts as a basis of rights.

[1] New York has perhaps departed as far as any court from the old notions of *ultra vires*. Bissell *v.* Michigan Southern & N. I. R. Co., 22 N. Y. 258. But see Adriance *v.* Roome, 52 Barb. (N. Y.) 399, 411. Also see 9 HARV. L. REV. 270.

[2] See East Anglian Rys. Co. *v.* Eastern Counties Ry. Co., 11 C. B. 775, 811; Ridley *v.* Plymouth, Stonehouse, and Devonport Grinding and Baking Co., 2 Exch. 711, 717.

[3] It might be argued that this case is distinguishable by treating the articles of association as similar to by-laws rather than to an American charter. See COOK, CORPORATIONS, § 725; Ashbury Ry. Carriage and Iron Co. *v.* Riche, L. R. 7 H. L. 653, 667. But the articles of association are registered with the memorandum of association and with the same formality. 8 EDW. 7, c. 69, § 15. Also see Ernest *v.* Nicholls, 6 H. L. 401, 419; Fountaine *v.* Carmarthen Ry. Co., L. R. 5 Eq. 316, 322.

[4] Probably the weight of authority treats stock-certificates as negotiable and thus